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## THE LAW AND LAWYERS OF PICKWICK.\*

When a lawyer is asked to do anything he always searches for a precedent. So when you invited me to address you upon some legal subject after dinner, I naturally turned to the ancient authorities and customs of the profession. Fortunately we are but reviving the practice of the Inns of Court in which our legal ancestors received their education by eating dinners and then discussing cases, and, let us hope by digesting both; and it is even said that the dinner part of the program was the most important as well as the most agreeable.

Moreover Lord Coke records in 12 Rep. 19, that in Michaelmas Term, 4 Jac. 1 *Post Prandium*, there was moved a question among the Judges and Serjeants, at Serjeants' Inn, if the High Commissioners in Ecclesiastical causes may by force of their commission imprison any man or no? With the resolution of the question we are not now concerned; it is as stale as the dinner which preceded it.

Three hundred years in time and three thousand miles in space separate us from that dinner of the Judges and Serjeants, at Serjeants' Inn. I will not say a corresponding difference exists between the diners, but certainly there is a wide distinction in character between that grave constitutional question and our subject this evening. However, with the authority of what Lord Coke would call a "book-case" and supported by the glorious traditions of the Inns of Court, I invite your attention this evening to The Law and Lawyers of Pickwick.

Authors like dogs and dogmas have their days. Literature has its fashions like flounces and hoopskirts, or to use a more dignified comparison, has like the ocean its waves

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\*A paper read before the Law Club of Pittsburgh *post prandium* on the evening of May 9, 1908.

and tides. Never was a book received with wilder enthusiasm than *The Pickwick Papers*. It has been translated into twenty languages, the imitations of it were numerous, its editions almost innumerable. This popularity continued for many years; *Pickwick* was the first book on which children were taught to cut their literary teeth, when they grew up they kept on devouring it and while the young people of this generation sometimes affect to neglect Dickens there are decided indications of a renaissance of interest. Dickens Societies and Fellowships are increasing in number all over the world and Dickens will come into his own again, while the "best sellers" of the book factories after their brief moment of glory disappear forever in darkness like the burned out sticks of literary rockets.

Charles John Huffam Dickens was born February 7, 1812, so that in a few years we shall be celebrating the Dickens Centenary. In 1827, at the age of fifteen, he became an office boy in the office of an attorney named Molloy, in New Square, Lincoln's Inn, and afterwards in May, 1827, entered the office of Ellis & Blackmore, of Gray's Inn. He left the active practice of a lawyer's office boy in November, 1828, his strictly professional career thus lasting only about eighteen months, but as he studied shorthand and became a reporter he was brought into contact with the profession in Doctors' Commons, the Lord Chancellor's Court, and the House of Commons. At the age of 23 he produced his "Sketches by Boz" and in the following year he won immortality through the *Posthumous Papers of the Pickwick Club*.

Dickens' early ambition was to be an actor, and he was always considered a brilliant amateur. *Pickwick* indeed is merely a succession of scenes like a magic lantern show. The preface says "the author's object in this work was to place before the reader a constant succession of characters and incidents; to paint them in as vivid colors as he could command and to render them at the same time lifelike and amusing." There is no more plot in *Pickwick* than there is in an omelette; yet, allowing for exaggeration and carica-

ture, the book is really important because it contains a vivid and interesting picture of life, especially low or middle class life, in England, in the Thirties, for which "histories may be searched in vain." The story is therefore valuable, for old Weller's coach has long since been supplanted by the locomotive and his city cousin, the bus driver, is meeting his rival in the motorbus. Emerson says Dickens is a painter of English details like Hogarth. And yet in spite of the low life depicted the book is not coarse or vulgar. As the *Edinburgh Reviewer*, in 1838, gravely observed "although the reader is led through scenes of poverty and crime we recollect no passage which ought to cause pain to the most sensitive delicacy if read aloud in female society,"<sup>1</sup> and Dickens himself in the preface to the original edition of *Pickwick* says that "he trusts that throughout this book no incident or expression occurs which would call a blush into the most delicate cheek or wound the feelings of the most sensitive person."

It is only natural that *Pickwick* being Dickens' first book (except the *Sketches*) should reflect his early experience of Law and Lawyers: and it was the more natural that he should caricature the lawyers because the men of our profession are too often regarded as the Ishmaelites of society, and the law itself as the scapegoat of our social ills.

Dickens had a marvellous memory like the most sensitive photographic films, and so his reproductions exaggerated lights and shadows and the resulting pictures were marked by caricature and burlesque. Caricature, the humorous exaggeration of characteristics, is always popular for every one likes to see every one else ridiculed, and burlesque renders any subject ludicrous by an incongruous manner of treating it. So when a talent for caricature and burlesque is turned loose upon the unpopular profession of the law, the result is highly edifying to the laity. But the law had its revenge on Dickens, for in his later life he had two per-

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<sup>1</sup> 68 *Edin. Review*, October, 1838, p. 97.

sonal experiences of litigation which probably confirmed his early impressions.

In *Dickens v. Lee*, 8 Jurist, 183 (1844), Charles Dickens filed a bill to restrain the defendant from publishing a fraudulent and colorable imitation of the Christmas Carol, which was advertised as a "Christmas Ghost Story reoriginated from the original by Charles Dickens, Esq., and analytically condensed expressly for this work." To add insult to injury the defendant dedicated the work to Charles Dickens himself. Vice Chancellor Knight-Bruce decided substantially in favor of the plaintiff but unfortunately Dickens had heavy costs to pay so that the fruit of his legal victory was nothing but a Dead Sea apple. In this case the Vice Chancellor declined to hear Serjeant Talfourd, Dickens' counsel, causing that distinguished lawyer disappointment amounting to agony as he had sat up until three in the morning preparing his speech.

In 1858, Dickens having had a disagreement with Bradbury & Evans, the publishers of "Household Words" and the partnership being dissolved, advertised the publication of "All the Year Round," stating in his advertisement that "Household Words" would be discontinued. Sir John Romilly, the Master of the Rolls, held however that he had no right to do as the right to use the title "Household Words" was an asset of the partnership and should be sold as such. It was bought in by Dickens, for £3,550, and the publication of "Household Words" ceased.<sup>2</sup>

But Dickens had many friends among the lawyers. He had dedicated Pickwick to this same James Noon Talfourd, who afterwards was his counsel, in recognition of Talfourd's efforts in the cause of authorship, for Talfourd in spite of Macaulay's opposition had exerted himself in the House of Commons, in behalf of the Copyright Act, from 1837 to 1842, when his efforts succeeded in passing the Act of 5th Victoria, ch. 45, on which the English law of copyright now depends. Dickens was then a reporter in the

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<sup>2</sup> *Bradbury v. Dickens*, 27 Beav. 53 (1859). 3 Forster's Dickens, 239.

"Gallery" and doubtless made there the acquaintance of Talfourd, which ripened into a warm friendship; indeed when Pickwick was completed the event was celebrated at a dinner with Talfourd in the chair.

We will now follow the footsteps of the Pickwickians in their pleasant though desultory paths.

The Pickwick Club was evidently intended as a burlesque of the British Association for the Advancement of Science, which was organized by Sir David Brewster and others in 1831, but the machinery of the Club was soon abandoned and the book records only the travels and adventures of Samuel Pickwick, the too susceptible Tracy Tupman, the poetic Augustus Snodgrass and the sporting Nathaniel Winkle. The illustrious Pickwick was a mature bachelor who had amassed a competent fortune apparently in the sugar business in Demarara, and Snodgrass in his minority had been Mr. Pickwick's ward.<sup>3</sup> The story is said to begin on May 13, 1827, when Pickwick and his friends in company with Alfred Jingle, set out for Rochester where they arrive in time for the charity ball, when Jingle arrayed in Winkle's "Pickwick coat" quarrels with Dr. Slammer, of the 97th Regiment. May 13, 1827, fell, as all the world knows (or at least knew then) on Sunday, on which day it is obviously impossible that English people should have a ball, but as we shall see the date is wrong by three years, and should be May 13, 1830.<sup>4</sup>

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<sup>3</sup> The lovely Mrs. Pott called him "a delightful old dear" and Pickwick appears throughout the tale as an old man. When he kissed his hand to her at the Eatanswill election the crowd shouted, "Oh, you venerable sinner," and, "I see him a vinkin at her with his vicked old eye." Mrs. Raddle called him "you old wretch"; Mrs. Cluppins called him an old brute; his counsel drew attention to his age at the trial of *Bardell v. Pickwick*; at Bath the ladies of an ancient and whist like appearance immediately saw that Pickwick was precisely the very man they wanted. At the close of the book he calls himself "a lonely old man." It gives one a slight shock to find that he could not have been much over forty-five or fifty years old, for when at Dingley Dell on Christmas day he is asked to slide on the ice, Pickwick says he used to do it when he was a boy, but he hadn't done such a thing for thirty years.

<sup>4</sup> Jingle refers on the opening day of the story to the French Revolution, of July, 1830. Mr. Percy Fitzgerald, in his *Pickwick Dictionary*, analyzes elaborately the chronology of the story.

Then follow in rapid succession the celebrated duel of Winkle and Dr. Slammer, the visit to the Wardles, at Dingley Dell, the shooting party and the cricket match and the elopement of Jingle and Rachel Wardle, the old maiden aunt to the White Hart Inn, High Street, Borough. Here we meet Sam Weller who directs Jingle to Doctors' Commons, for his marriage license. But Pickwick and his lawyer, little Mr. Perker, of Gray's Inn, save the lady in the nick of time. Perker was "a little man with a dark squeezed up face and small restless black eyes that kept winking and twinkling on each side of his little inquisitive nose as if they were playing a perpetual game of peep-bo with that feature. He was dressed all in black with boots as shiny as his eyes, a low white neck cloth and a *clean shirt* with a frill to it. A gold watch chain and seals depended from his fob. He carried his black kid gloves *in* his hands not *on* them; and as he spoke thrust his wrists beneath his coat-tails, with the air of a man who was in the habit of propounding some regular posers." The remarkable fact in this description seems to be that the lawyer wore a clean shirt.<sup>5</sup>

Rachel being rescued, the Pickwickians returned to Dingley Dell and found that the lovesick Tupman, after Rachel's elopement, had disappeared with suicidal intent. They followed him to the Leather Bottle, at Cobham, and find Tupman absorbing fresh life from a roast fowl, bacon, ale "and et ceteras." After discovering the stone marked with the cabalistic initials of Bill Stumps (an episode which Dickens probably borrowed from Scott's *Antiquary*) they all returned to Dingley Dell and then back to London to exhibit the ancient relic at a meeting of the Pickwick Club, and prepare to visit the ancient borough of Eatanswill, at the invitation of Perker, who was agent for the Honorable Samuel Slumkey, one of the candidates.

The chronology of Pickwick is a little mixed, but it

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<sup>5</sup> Mr. Blackmore, of Ellis & Blackmore, who were Dickens' employers, always contended that Mr. Ellis was the original of Perker.

seems to have been early in July that a memorable occurrence took place in Mr. Pickwick's apartments in Goswell Street. Mrs. Martha Bardell, his landlady, the "relict and sole executrix of a deceased custom house officer, was a comely woman of bustling manners and agreeable appearance, with a natural genius for cooking improved by study and long practice into an exquisite talent."

If the narrative of Pickwick's conversation with Mrs. Bardell is to be accepted as true, that lady might well have understood it as a proposition of marriage. "'Oh you kind, good playful dear' said Mrs. Bardell as she flung her arms about Mr. Pickwick's neck with a cataract of tears and a chorus of sobs," (although how one person could execute a chorus is hard to understand). "Bless my soul" cried the astonished Mr. Pickwick—"Mrs. Bardell, my good woman; dear me, what a situation—pray consider—Mrs. Bardell don't—if anybody should come." Unfortunately somebody *did* come, for at that moment Tupman, Winkle and Snodgrass entered the room and beheld their chief supporting Mrs. Bardell in his arms. The situation was, to say the least, awkward, and Pickwick's explanation still more awkward, so that Sam Weller's entrance was very welcome to Pickwick, who at once engaged him in a capacity in which he would have "change of air, plenty to see, and little to do which suited his complaint uncommon."

The scene shifts to Eatanswill,<sup>6</sup> which has been identified as Ipswich, and there Pickwick participated in the election and attended Mrs. Leo Hunter's Fête Champêtre and has his exciting adventure in the young ladies' boarding school at Bury St. Edmunds, as a result of which he spends three days in bed with the rheumatism. Just as he rallies he is handed a letter which he found worth reading, although its perusal doubtless did not tend to restore his nerves, which were greatly shattered by pain and exposure:—

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<sup>6</sup> Pott, the editor of the Eatanswill Gazette, consults the files of that paper for 1828, so the year could not have been 1827.



“Freeman’s Court, Cornhill, August 28, 1827.

Bardell against Pickwick.

Sir:—

Having been instructed by Mrs. Martha Bardell to commence an action against you for a breach of promise of marriage, for which the plaintiff lays her damages at fifteen hundred pounds, we beg to inform you that a writ has been issued against you in this suit, in the Court of Common Pleas; and request to know, by return of post, the name of your attorney in London, who will accept service thereof. We are, Sir,

Your obedient servants,

Dodson & Fogg.

Mr. Samuel Pickwick.”

“Mercy on us!” said Mr. Pickwick, “What’s this? It must be a jest; it—it can’t be true. It’s a conspiracy. Ridiculous.” Getting little comfort from his triumvirate of friends who reminded him of the recent embarrassing occurrence, or from Wardle, who calls him a sly dog, Pickwick forms the idiotic resolve to interview the plaintiff’s attorneys in person, but prepares for the event by going with the shooting party on Captain Boldwig’s preserves, where he got gloriously drunk and woke up in the village pound where Boldwig has deposited him like a stray beast.

The office of Dodson & Fogg was the ground floor front of a dingy house at the very furthest end of Freeman’s Court, Cornhill, and the clerks’ office was a dark, mouldy, earthy smelling room with a couple of old wooden chairs, a very loud ticking clock, an almanack, an umbrella stand, a row of hat pegs, bundles of dirty papers, some old boxes and decayed ink bottles of various shapes and sizes. Here Pickwick presented himself on September 3, 1830 (for the date of the letter above is certainly wrong by three years), and after waiting a suitable number of minutes is ushered into the private room of Mr. Fogg, “an elderly pimply-faced vegetable diet sort of man in a black coat, dark mixture trousers and small black gaiters, who seemed to be

an essential part of the desk at which he was writing and to have about as much thought or feeling." Fogg cautiously will not begin the interview until Dodson appeared, a plump, portly, stern-looking man, with a loud voice and thus outnumbering poor Pickwick two to one they proceeded to bully him and actually serve him with a copy of the writ showing him the original.<sup>7</sup> Pickwick boiled with rage and called the lawyers swindlers. This was just what they wanted and they called the clerks to witness, as Pickwick threatened to assault them. The prospective suit for damages however was avoided by the promptness of Sam Weller. "Battledore and shuttlecock's a wery good game" said Sam "Vhen you ain't the shuttlecock and two lawyers the battledores in vich case it gets too excitin' to be pleasant."

"Sam" said Mr. Pickwick, "I will go immediately to Mr. Perker's."

"That's just exactly the wery place vere you ought to have gone last night," replied Mr. Weller. Mr. Pickwick felt the need of a drink of something hot but as he remembered (perhaps) Lord Coke's dictum in 4 Inst. 57, that "hot water spoils the stomach" he mixed it with brandy and then betook himself to Perker's chambers, at Gray's Inn, but he must have spent an unconscionable time at the tavern for our veracious narrative states that his visit to Dodson & Fogg was in the morning and that by the time he reached Gray's Inn it was eight o'clock. In those old times this appeared to be the regular hour for lawyers to close their offices, as appeared from the unbroken stream of legal gentlemen that met him in muddy highlows, soiled white hats, and rusty apparel. Perker had gone, and Lowten, his clerk, was at the Magpie and Stump singing comic songs. Then old Jack Bamber told about the Inns of Court and their "lonely rooms, where young men shut themselves up and read and read hour after hour and night after night till their reason wandered beneath their midnight studies. How many vain pleaders for mercy do you think have

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<sup>7</sup> 1 Chitty's Archbold's Practice 114. Sellon's Practice 95.

turned away heart-sick from the lawyer's office to find a resting place in the Thames or a refuge in the gaol? They are no ordinary houses those. There is not a panel in the old wainscotting but that, if it were endowed with the powers of speech and memory, could start from the wall and tell its tale of horror."

Dickens then in the story of the Queer Client undoubtedly draws from his own childish experience of the Marshalsea where on Sundays he used to visit his father, a prisoner for debt. "It may be my fancy or it may be that I cannot separate the place from the old recollections associated with it, but this part of London I cannot bear. The streets around are mean and close, poverty and debauchery lie festering in the crowded alleys, want and misfortune are pent up in the narrow prison. Twenty years ago that pavement was worn with the footsteps of a mother and child who day by day presented themselves at the prison gate. No expression of interest or amusement lighted up its thin and sickly face. His recollections were few enough, but they were all of one kind, all connected with the poverty and misery of his parents. The hard realities of the world, with many of its worst privations—hunger and thirst, and cold and want—had all come home to him; and though the form of childhood was there, its light heart, its merry laugh and sparkling eyes were wanting."

Lowten, a puffy-faced young man, drew a chair "close to Mr. Pickwick in an obscure corner of the room and listened attentively to his tale of woe." Dodson & Fogg's sharp practice excited his professional admiration. "Capital men of business is Dodson & Fogg" was the eulogy of Lowten, who in the absence from town of his principal promised "to do the needful" for Pickwick.

Feeling as all good clients should that having handed over his case to the lawyer "to do the needful," the responsibility of the case was shifted to other shoulders, Pickwick went to the Great White Horse Inn, at Ipswich, and with a fatality which seemed to attend him wherever the ladies were concerned, had the famous adventure with Miss With-

erfield, better known as the Lady in the Yellow Curl Papers. This involved him the next morning in a quarrel with Mr. Peter Magnus, the lady's fiance, when the latter on introducing Mr. Pickwick *without* the horrors of his night cap to Miss Witherfield *without* her yellow curl papers, finds that they have met before, but where, the lady says she would not reveal for worlds. So enraged was Mr. Magnus on hearing this that the middle-aged lady made up her mind that it was the duty of the gentlemen to engage forthwith in a duel, and that it was her duty to prevent it by informing George Nupkins, Esquire, the Mayor of Ipswich. As duelling was regarded by that magistrate as a "gross infringement of His Majesty's prerogative, expressly stipulated in Magna Charta, and one of the brightest jewels in the British Crown, wrung from His Majesty by the Political Union of Barons," warrants were at once issued for the arrest of Messrs. Pickwick and Tupman, although Pickwick had no more idea of fighting a duel than he had of marrying Miss Witherfield.

Grummer, the constable, who arrested Pickwick and Tupman, was "an elderly man in top boots and remarkable for a bottle nose, a hoarse voice, a snuff-colored surtout and a wandering eye." Grummer with his satellite Dubbley, a dirty-faced man over six feet tall, apprehended Mr. Pickwick at dinner, despite Snodgrass' objection that "this is a private room." Mr. Grummer shook his head. "No room's private to His Majesty when the street door's once passed. That's law. Some people maintains that an Englishman's house is his castle. That's gammon." Mr. Grummer referred of course to the well known doctrine of Semayne's case, 5 Co. 91 b, as to which a modern commentator, Mr. Dooley, of Chicago, has observed "An American's home as wan iv th' potes says, is his castle—till th' morgedge falls due." In charge of these representatives of the law and escorted by the entire youthful population of Ipswich, the Pickwickians were brought before the Mayor, who sat in front of a big bookcase, in a big chair, behind a big table, and before a big volume. The hearing is amusing, for

Dickens had evidently in mind some bombastic and ignorant Justice, whose court he had attended. Fortunately, Pickwick was able privately to inform the Mayor that he had received as a friend, Alfred Jingle, masquerading as Captain Fitz-Marshall, and thus obtained an honorable discharge.

On his return to London, Pickwick, we may be sure, did not go to his old lodgings in Goswell Street, but took up his abode in "very good old-fashioned and comfortable quarters, to wit, the George and Vulture Tavern, Lombard Street," and immediately sent Sam with a full quarter's rent to give a month's notice to Mrs. Bardell, so as to terminate his tenancy, and to bring back his "things" which he had left in the Goswell Street house.

When Sam called, Mrs. Bardell, Mrs. Cluppins and Mrs. Sanders were engaged in a little tea party, and when Mr. Pickwick's man was announced

"Now what *shall* I do?" said Mrs. Bardell to Mrs. Cluppins.

"I think you ought to see him" replied Mrs. Cluppins. "But on no account without a witness."

"I think two witnesses would be more lawful," said Mrs. Sanders, who like the other friend was bursting with curiosity and apparently familiar with the "two witness" rule of the civil law.

So Sam chatted with the ladies, drank a toast "Success to Bardell against Pickwick" and obtained in the course of conversation after the wine the highly interesting information that Dodson & Fogg had taken the case entirely on speculation.

Then they all went to Dingley Dell, for the Christmas festivities, and there Bella and Trundle were married, and Winkle danced with the black-eyed young lady with fur round the top of her boots, and Pickwick under the mistletoe kissed the old lady in the lavender colored silk dress, and all the girls kissed Mr. Pickwick, and the fat boy kept on eating pies, and after all this fun the Pickwickians went up to town to prepare for the trial of Bardell vs. Pickwick.

But they found the enemy was also preparing. Mr. Jackson, of Dodson & Fogg, "an individual in a brown coat with brass buttons, with long hair and soiled drab trousers" called with a subpoena which he served upon each of Pickwick's three friends and Sam Weller, with a shilling apiece as a fee. Pickwick slept little that night, his memory had received a very disagreeable refresher, and so he started early the next morning with Sam, for Perker's office.

"This action, Sam," said Mr. Pickwick, "is expected to come on, on the fourteenth day of next month."

"Remarkable coincidence that 'ere, Sir," said Sam.

"Why remarkable, Sam?" enquired Mr. Pickwick.

"Valentine's Day, Sir," responded Sam; "regular good day for a breach o' promise trial."

Mr. Weller's smile awakened no gleam of mirth in his master's countenance, and they proceeded to Perker's office, where they found Lowten driving away a persistent client, a miserable looking man in boots without toes and gloves without fingers. "There never was such a pestering bankrupt as that, since the world began, I do believe!" said Lowten with the air of an injured man. "His affairs haven't been in Chancery quite four years yet, and I'm d—d if he don't come worrying here twice a week."

"Well" said Perker, after a professional tribute to the smartness of Dodson & Fogg, "we've done everything that's necessary. I have retained Serjeant Snubbin."

"Is he a good man?" enquired Mr. Pickwick.

"Good man!" replied Perker; "Bless your heart and soul, my dear Sir, Serjeant Snubbin is at the very top of his profession, engaged in every case. We say, we of the profession, that Serjeant Snubbin leads the Court by the nose." (Snubbin by the way is said to have been intended for Serjeant Arabin.) Perker is not very encouraging to his client. "We have only one course to adopt, my dear Sir, cross-examine the witnesses, trust to Snubbin's eloquence, throw dust in the eyes of the judge; and ourselves on the jury." Pickwick being an old bachelor had not

acquired that habit of unquestioning obedience to the will of a superior intelligence which in time assumes the rank of a virtue; indeed, Perker had already complained that Pickwick, like many a client we have known, had insisted upon managing his own case. But now Pickwick following the "crooked cord of private opinion" made up his mind that he must have a personal consultation with Serjeant Snubbin, and after overruling his attorney's objections they went to the Serjeant's office in Lincoln's Inn, Old Square. Mr. Serjeant Snubbin was a lantern-faced, sallow complexioned man about forty-five or fifty years of age. He had a dull looking boiled eye, his hair was thin and weak, he wore an ill washed and worse tied white neckerchief, and the slovenly style of his dress and his dirty office showed that he was far too much occupied to take any heed of his personal comforts. Now Mr. Pickwick, with Perker's assistance, stated his ridiculous purpose in calling upon his counsel, namely that there was no ground for Mrs. Bardell's action, that he was conscientious he was in the right and that, unless Snubbin believed this, "I" said Mr. Pickwick, "would rather be deprived of the aid of your talents than have the advantage of them."

Not only did Pickwick make this wholly unnecessary declaration to his counsel, but he also made some remarks about the conduct of his case before a Jury, which to say the least, were gratuitous.

"Gentlemen of your profession, Sir," continued Mr. Pickwick, "see the worst side of human nature—all its disputes, all its ill will and bad blood rise up before you. You know from your experience of juries how much depends on *effect* and you are apt to attribute to others a desire to use for purposes of deception and self interest the very instruments which you in pure honesty and honour of purpose and with a laudable desire to do your utmost for your client, know the temper and worth of so well, *from constantly employing them yourselves.*"

Mr. Serjeant Snubbin made no reply whatever to Pickwick's extraordinary harangue but rather snappishly di-

rected that his junior, Mr. Phunkey, be summoned, and relapsed into abstraction until he came; and then having introduced his client, told Phunkey to "take Mr. Pickwick away." So ended the consultation.

If the senior Weller has then been called on for an opinion he would doubtless have proffered his well known advice as to the two and only two defenses, character and an alleybi. "I've got some friends" said he "as'll do either for him, but my advice 'ud be this here—never mind the character, and stick to the alleybi. Nothing like an alleybi, Sammy, nothing." Indeed had Mr. Pickwick made the acquaintance of the elder Weller at an earlier date, Weller, as an old matrimonial hand, would then have given him the warning which came too late. "You're never safe with 'em, Mr. Pickwick, ven they vunce has designs on you; there's no knowin' vere to have 'em and vile you're a considerin' of it they have you. I was married fust that vay myself, and Sammy wos the consekens o' the manooover." The caution is not unlike that given by Emerson, our American philosopher, in his "Conduct of Life." "We are not very much to blame for our bad marriages. We live amid hallucinations, and this especial trap is laid to trip up our feet with and all are tripped up first or last."

The trial took place on Valentine's Day, at the Guildhall, and was presided over by Mr. Justice Stareleigh (who is supposed to have been intended for Sir Stephen Gaselee), "a particularly short man and so fat that he seemed all face and waistcoat." We will pass over somewhat hurriedly the report of this celebrated trial, as it is one of the best known scenes in English fiction, and familiar to everyone.<sup>8</sup> The jury was called and among them was a chemist or druggist as we should say who asked to be excused because there was no one in charge of his shop but an errand boy who thought Epsom salts meant oxalic acid, and syrup of senna,

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<sup>8</sup> Serjeant Talfourd is said to have assisted Dickens in the legal points of the trial and Serjeant Buzfuz's great speech is said to have been founded upon an actual case, 2 Atlay's Victorian Chancellors 163.



laudanum. It is more than likely that Dickens had in mind the case of *Rex v. Terrymond*, 1 Lewin Crown Cases 169, where a chemist's apprentice was tried for manslaughter, in 1828, for causing the death of an infant by negligently delivering laudanum for paregoric. The apprentice was convicted and fined £5. Opposed to Serjeant Snubbin and Mr. Phunkey were Serjeant Buzfuz (who is supposed to be Serjeant Bompas), and Mr. Skimpin, a promising young man of two or three and forty; the former of whom opened the case with his famous speech and then produced Mrs. Cluppins, who testified to the occurrences of that fatal July morning. Pickwick, interfering as usual of course, actually forbade his counsel to cross-examine and instructed him to say that the account was in substance correct. Then by a bold stroke Buzfuz called from the enemy's camp Mr. Winkle, who gave his name as Nathaniel.

"Daniel" wrote the judge: "Any other name?"

"Nathaniel, Sir, my Lord I mean."

"Nathaniel Daniel or Daniel Nathaniel?"

"No, my Lord, only Nathaniel, not Daniel at all."

"What did you tell me it was Daniel for, then, Sir?" inquired the Judge.

"I didn't, my Lord" replied Mr. Winkle.

"You did, Sir" said the Judge, with a severe frown. "How could I have got Daniel on my notes unless you told me so, Sir?" This argument was of course unanswerable, and the Judge had the authority of Lord Coke, who remarked in *Floyd & Barker's case*, 12 Rep. 26 "*Absurdum est affirmare (re judicata) credendum esse non judici.*" I remember hearing one of our Common Pleas Judges in Philadelphia (now deceased) say exactly the same thing. Mr. Skimpin proceeded to cross-examine his own witness without the slightest objection from Snubbin, and when the latter's turn came for cross-examination he entrusted that delicate matter to Mr. Phunkey, who was without any experience and actually brought to light the episode of Pickwick and the Lady in the Yellow Curl Papers.

Tupman and Snodgrass were the next witnesses and both

corroborated their unhappy friend, then Mrs. Susannah Sanders was examined by Buzfuz, but this time Snubbin did the cross-examination himself. Buzfuz, emboldened by his success, made his only mistake. He called Sam Weller, who seized the opportunity in answer to an entirely incompetent question to tell the Jury of his conversation with Mrs. Bardell and her friends, in reference to Dodson & Fogg. "Yes" said Sam, "they said what a wery gen'rous thing it was o' them to have taken up the case on spec and to charge nothin' at all for costs unless they got 'em out of Mr. Pickwick."

Sam's examination called for a judicial ruling on evidence. He admitted that he was in Pickwick's service.

"Little to do, and plenty to get, I suppose?" said Serjeant Buzfuz with jocularly.

"Oh, quite enough to get, Sir, as the soldier said ven they ordered him three hundred and fifty lashes" replied Sam.

"You must not tell me what the soldier or any other man said Sir" interposed the Judge; "it's not evidence."<sup>9</sup>

Snubbin, undoubtedly at the instance of his client, then stated "to save the examination of another witness, that Mr. Pickwick had retired from business and was a gentleman of considerable independent property." As this left a pretty safe margin for the jury to guess at the damages, you may be sure Buzfuz had no objection and closed his case. Snubbin offered no testimony, and at once went to the jury. The judge delivered a jelly fish charge, the jury retired and came back in just fifteen minutes, a very bad quarter of an hour for Pickwick, who put on his spectacles and "gazed at the foreman with an agitated countenance and a quickly beating heart," which probably stopped beating altogether when he heard the jury give their verdict for the plaintiff with damages in the sum of seven hundred

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<sup>9</sup> The ruling is cited in Taylor on Evidence, 567, but apparently the case is not referred to by Mr. Wigmore in his work on Evidence. If so it is the only reported decision which he has failed to cite.

and fifty pounds. If Pickwick had been learned in the law he might have congratulated himself that the Ecclesiastical Courts had no longer jurisdiction to compel specific performance of the contract to marry; as it was, he immediately announced his determination never to pay a farthing of cost or damages even if he should spend the rest of his life in prison, and having learned that execution could not issue until the next term, at the expiration of two months, resolved to enjoy this breathing spell at Bath, for which they took the "Moses Pickwick" coach the next morning.

Trinity Term commenced, Pickwick returned to London, and it is worth while to observe that Snubbin and Perker so felt the hopelessness of their case, that they did not even move for a new trial. Dodson & Fogg lost no time in issuing an execution against the body of Samuel Pickwick, who was arrested in his bed-room at the George and Vulture. Namby, the sheriff's officer, a man dressed in a particularly gorgeous manner with plenty of jewelry, called at nine in the morning, when Pickwick, who was not fond of early rising, was yet asleep. He was hurried through the sordid details of the toilet and then taken without breakfast by his captor to his spunging house, in Bell Alley, Coleman Street. Here defendants were allowed a respite in the custody of the sheriff's officers before going to prison in order that they or their friends might have a chance to pay the judgment. Perker, who had been sent for, urged him to do this, but Pickwick as usual was obstinate and declared he would go to prison that night.

"You can't go to Whitecross Street, my dear Sir" said Perker. "Impossible!" there are sixty beds in a ward and the bolt's on sixteen hours out of the twenty-four. "You can go to the Fleet, my dear Sir, if you're determined to go somewhere." Now if a defendant in the custody of the sheriff wanted to be committed to the Fleet he could do it by means of a *Habeas corpus cum causa*, which writ operated to remove the body of the prisoner and the whole cause. The writ issued as of course, was returnable imme-

diately, and in obedience to it the sheriff's officer brought the defendant to the Judge in chambers, who signed the commitment. The practice as stated by Dickens seems to be accurate according to the books,<sup>10</sup> the proceedings in the Judge's chambers, the office boys and clerks, &c., is so life-like that it was no doubt drawn from his own experience.

The Fleet Prison was destroyed about 1846. For nearly a millenium, to use the word in a very inappropriate connection, this prison had existed as an institution so horrible as to be almost picturesque. Here were gathered the poor debtors taken in execution according to the old rule *Qui non habet in aere, luet in corpore*, and put in the charge of the Warden of the Fleet who was answerable either for the body of the debtor or the debt that he owed. The Warden made his profit from the fees he was able to exact from the wretched inmates, and somewhat resembled the landlord of a hotel from which his unhappy guests could find no escape. Indeed the wardenship was a lucrative vested interest, an estate saleable and inheritable like a manor. The debtor with his hopes abandoned and his ambitions forgotten was worse off than a criminal, for the felon could serve out his term. He was worse off than a pauper, for the law made no provision for his support. Nor could the creditor, if so disposed, release his debtor without cancelling his debt, and could only hope that the debtor's family or friends would pay that debt and procure the discharge. The debtor too often became a lost and forgotten man, penniless and destitute except so far as the poor box rattled at the gate and the cry of "Pity the poor prisoners" aroused the compassion of the charitable wayfarer. And yet Newgate and the Compter<sup>11</sup> of London were reputed to be still worse and the wretches confined in them from early times endeavored to obtain their transfer by the simple

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<sup>10</sup> 2 Chitty's Archbold, 941. Mr. Fitzgerald in his "Bozland" is very much puzzled by the proceeding.

<sup>11</sup> The Counter or Compter of London (from *computare*) was a city prison for debtors and minor offenders.

legal fiction of confessing themselves debtors to the King for whom the Fleet was the appropriate prison.<sup>12</sup>

The law of imprisonment for debt was modified in England by statute in 1844, and finally abolished in 1869, at least theoretically; but the County Courts retain the power to imprison debtors as for contempt who refuse to obey its judgments. A newspaper has stated indeed that in 1905 over 11,000 were imprisoned for this cause.<sup>13</sup>

When Pickwick went to the Fleet the prison had been materially improved through the reforms of Howard, but it was in all conscience bad enough for as Coke says, "*Carcer est mala mansio*;" though we cannot feel much sympathy for a man who could escape by paying a judgment obtained by legal process, unjust though he felt it to be. He certainly was introduced to very unattractive society by Roker when he spent his first night with Smangle and Mivins, and was chummed the next day with the drunken chaplain, the disreputable butcher, and the reprobate black leg.

But as Perker should have told Pickwick, who found it out for himself, gold and silver those "mute but moving ambassadors" were inside the Fleet pretty much the same as they were outside of it, except that their purchasing power was not quite so great. When a man was able to sequester his property or income from his creditors he could live in the Fleet in comparative comfort. There were many cases indeed of persons who became used to the place, lost their friends, contracted new habits of sloth and carelessness and actually refused to leave the prison when finally the opportunity came.

"They don't mind it" said Sam, "it's a regular holiday to them, all porter and skettles. It's the other vuns as gets done over with this sort o' thing; them downhearted fellers as can't svig away at the beer nor play skettles neither; them as vould pay if they could and gets low by being boxed

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<sup>12</sup> Oeconomy of the Fleete, Camden Society, XII. Cf. *Worlay v. Harrison*, Dyer 249 b. 8 Eliz.

<sup>13</sup> See as to power of the Court Article by E. Bowen-Rowlands, 18 L. Q. R. 243 (1902).

up. Them as is always a idlin' in public houses it don't damage at all, and them as is always a vorkin' ven they can, it damages too much." And then Sam tells the story of the dirty-faced man in the brown coat, a prisoner for seventeen years, who was allowed to go out by the turnkey and one night got back just in time to be locked in. The turnkey threatened if he did not keep better hours to shut him out altogether, and the dirty-faced man was seized with a violent fit of trembling and never went out again.

Now there was a Chancery prisoner who had been in the Fleet long enough to have lost friends, fortune, and home and to have acquired a right to a separate room. This he agreed to let Pickwick have for twenty shillings a week, and Pickwick hired some furniture for twenty-seven and six pence a week in addition. "As they struck the bargain Mr. Pickwick surveyed the prisoner with a painful interest. He was a tall cadaverous man in an old great coat and slippers, with sunken cheeks and a restless eager eye. His lips were bloodless and his bones sharp and thin. God help him, the iron teeth of confinement and privation had been slowly filing them down for twenty years."<sup>14</sup>

But the poor side of the prison was the worst. When Pickwick looked down the dark and filthy staircase which led to a range of damp and gloomy stone vaults, he mistook them for coal cellars. "You don't really mean" said he "that human beings live down there in those wretched dungeons?" "Yes" replied Mr. Roker "and die down there very often and what of that? Yes, and a very good place it is to live in, ain't it?"

Now Sam Weller had no intention of letting Mr. Pickwick live in the Fleet without his attendance, and obtained the professional aid of Mr. Solomon Pell, who had once helped Weller, senior, through the Insolvent Court. This

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<sup>14</sup> But some of the Chancery prisoners held lucrative situations in prison and one solicitor actually practised there with much success. 2 Atlay's Lives of the Victorian Chancellors, 15. Sir Edward Sugden exposed Dickens' ignorance of chancery procedure and the law of contempt in *The Times*, 2 Atlay, 35.

learned lawyer was a fat, flabby man in a coat which looked green one minute and brown the next. His forehead was narrow, his face wide, his head large and his nose on one side of his head as if Nature had given it an angry tweak. "The last Lord Chancellor," said Pell, "was very fond of me." "Pell" said the Chancellor (who by the way must have been Lord Eldon), "No false delicacy, Pell. You're a man of talent, you can get anybody through the Insolvent Court, Pell, and your country shall be proud of you." "My Lord" I said "you flatter me." "Pell," he said, "if I do I'm damned."

The scheme concocted was for Weller, senior, to lend Sam twenty-five pounds on a confession of judgment, upon which execution was issued at once by Mr. Pell, and Sam was arrested on a *capias* and committed to the Fleet, not very long after he left it at Mr. Pickwick's command and very much to the astonishment of that gentleman.

Pickwick spent three months in the Fleet, and toward the close of July those sharp practitioners, Dodson & Fogg, turned their batteries on their *quondam* client, Mrs. Bardell. "Just as a matter of form" they had induced her after the trial to give them a *cognovit* or confession of judgment, for their costs, and when they lost hope of getting anything from Pickwick, they entered up judgment, issued execution and Mrs. Bardell found herself once more under the same roof as her old lodger, Pickwick, but singularly enough was taken there directly and not from the preliminary custody of the sheriff's officer. Our hero's chivalry was aroused and once more Perker was summoned. Notwithstanding Pickwick's habitual obstinacy he finally consented to take Perker's advice. Mrs. Bardell agreed to satisfy her judgment upon Pickwick's paying to Dodson & Fogg their costs, and in addition she signed a statement that the suit was from the beginning brought about by these sharp practitioners. These costs amounted to £133.6.4, which Dodson & Fogg received with great good humor, and the jocular remark to Pickwick that he didn't seem to look quite so stout as when they last had the pleasure of

seeing him. What Pickwick had to pay his own lawyers Dickens does not tell us, but presumably as much, and in view of his extra expenses in the Fleet, Mr. Pickwick paid altogether perhaps fifteen hundred dollars or more, and spent three months in prison, for the dubious pleasure of supporting the Widow Bardell in his arms for a fraction of a minute.

Perker could not undertake to say whether the evidence which could be got about the conduct of the suit would be sufficient to justify the indictment of Dodson & Fogg for conspiracy, and an ingenious writer in the *Cornhill Magazine* for July, 1890, has made a most able and amusing defence of Dodson & Fogg, showing that these gentlemen have not deserved their unhappy reputation.

There is one more legal episode in *Pickwick*, the probate of Mrs. Weller's will and the settlement of her estate by Mr. Solomon Pell. The will was written on a dirty sheet of letter paper and had been deposited by Mrs. Weller, in the little black teapot on the top shelf of the bar closet, at the Marquis o' Granby, and by it she bequeathed £200 in consols. to Sam and all the residue to her husband, whom she appointed her executor.

What right Mrs. Weller had at the date of the story to make a will is not very obvious, as before the married Women's Property Act of 1882, a married woman was unable generally speaking to make a will even of personalty, for her chattels belonged to her husband, and naturally she could not dispose of these by will except with his consent. Possibly it was of property settled to Mrs. Weller's separate use.<sup>15</sup> But an unjust law can always be evaded. Where there is a will there is a way, and as women always have their way they naturally expect to have their wills also, so Mrs. Weller made hers. However, under the circumstances, it seemed to make so little difference that Mr. Weller having read it to Sam was on the point of putting the testamentary paper in the

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<sup>15</sup> Jarman on Wills, Sec. 40.



fire but Sam insisted on a more formal settlement of the estate. Pell undertook the probate; the first thing he did was to demand £5, the second was to refresh himself with three chops and liquids both malt and spirituous at the expense of the estate, and then the will was proved at Doctors' Commons, the legacy duty paid, the business "good vill, stock and fixters" sold, the inventory taken, the consols. transferred, and at the end Mr. Pell remarked to his clients, "You'll find my terms very cheap and reasonable, and no man attends more to his clients than I do, and I hope I know a little law besides."

Dickens did an immense amount of good by his novels in exposing the wrongs and cruelties of the older English law and the inhumanity of the existing social order. Ridicule is stronger than argument, caricature more powerful than a bald recital of sober facts. Ten thousand men and women read his accounts of life in the Fleet and the horrors of imprisonment for debt as told in *Pickwick*, for every one who read the actual facts often much more disgusting in the reports and the works of legal reformers;<sup>16</sup> and without much doubt these farcical *Pickwick* papers hastened the abolition of imprisonment for debt and the destruction of the Fleet, so that the cause of humanity owes much to his humor and pathos. Had Dickens possessed greater legal training and a mind fitted for the requisite technical detail, there were many anomalies and outgrown antiquities of the law which he could have demolished.

It would have been easy for him in the trial of *Bardell vs. Pickwick* to show the absurdity and the injustice of the legal rules of the incompetency of parties and interested witnesses. Mrs. Bardell under proper cross-examination might have exposed the weakness of her case, *Pickwick* if allowed to testify would have shown the strength of his own, provided he stood the test of cross-examination. But the idea seems never to have entered Dickens' mind.<sup>17</sup>

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<sup>16</sup> E. g. Case of *Huggins et al.*, 17 St. Trials, 298.

<sup>17</sup> Although now the testimony of the parties is admissible in breach

Now there is a sober lesson for us in the *Pickwick Papers*, the iniquity of speculative agreements as to costs and fees between attorney and client. We have all read Sharswood's *Legal Ethics*, and none can read what that learned and upright lawyer has written and fail to see how the practice corrupts and degrades the profession, transforms the sworn officer of the Court into a party litigating his own claim, destroys the dignified relation of attorney and client by making them mere business partners in a commercial venture, unduly encourages litigation, and makes the lawyer become his own Satanic tempter.

Whatever was the exact agreement between Mrs. Bardell and Dodson & Fogg, it seems clear that in England it was either entirely void as against public policy or at least was subject to the supervisory power of the Court.<sup>18</sup> The Act of 33 and 34 Vict. ch. 28, provides that attorneys and their clients may contract in writing for the payment of fees and disbursements in respect to business done or to be done either for a gross sum or by a commission or percentage, *but* the amount payable under the agreement cannot be received by the attorney until the contract has been examined and allowed by the taxing officer of the Court, and if the agreement is not fair and reasonable the opinion of the Court may be obtained and the Court has power to reduce the amount or cancel the agreement altogether. The attorney moreover cannot acquire any interest in any suit or contentious proceeding or stipulate for payment only in the event of success in such suit or proceeding.<sup>19</sup> That a contract between lawyer and client for a fee contingent upon the successful event of the case is valid has not apparently been doubted in Pennsylvania since *Patten v. Wilson*, 34 Pa. 299, where such an agreement was held to operate as an equitable assignment of the verdict in an action of tort, and therefore

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of promise cases yet Parliament by Act of 32 and 33 Vict. c. 68, sec. 2, required that it be corroborated by some other material evidence in support of the promise.

<sup>18</sup> *Drax v. Scroope*, 2 B. & Ad., 581 (1831).

<sup>19</sup> *Clare v. Joseph*, 76 L. J. K. B. 724.

good as against an attaching creditor of the client.<sup>20</sup> In *Perry v. Dicken*, 105 Pa. 83 (1884), the attorney, who appears to be the same who figured in *J. Charles Dicken's Case*, 67 Pa. 169 (strange coincidence of names), was the only surviving witness as to facts essential to his client's case, and undertook with other counsel of record to prosecute the case (an ejectment) for a contingent fee of \$5,000. He testified, he won the case, he sued his client for his fee and recovered; and the Supreme Court by a majority of four to three affirmed the judgment.

We must confess with sorrow that for the last twenty-five years the standard of our profession in this and other States has been steadily deteriorating. The lawyer no longer occupies the position he formerly held as a member of a class to which on the whole others had a right to look up with respect and confidence, and the Bench is not likely to rise much higher than the average of the profession. There are doubtless other causes, but the capital cause is this unprofessional and degrading practice now so prevalent, especially in actions of tort, and most of all in damage cases against corporations, which calls emphatically for an awakening of the professional conscience and for correction by the legislature. This is the duty of the day for those of us who wish the Bar of our State and country to regain its former reputation.

*John Marshall Gest.*

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<sup>20</sup> *Phila. v. Terry*, 17 Phila. 275; *Fenn v. McCarroll*, 208 Pa. 615.